

CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 755

J. BOB GRIFFIN, ADMINISTRATOR WITH WILL
ANNEXED OF THE ESTATE OF ROBERT D. GOR-
DON, DECEASED, PETITIONER.

v. v.

JOHN D. McCOACH, TRUSTEE

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED FEBRUARY 10, 1941.

CERTIORARI GRANTED MARCH 17, 1941.

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JUDG & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 17, 1941.

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CAPTION.

BE IT REMEMBERED, that at a regular term of the United States District Court for the Northern District of Texas, begun and holden a Dallas, Texas, on the 8th day of January, A. D. 1940, and which said term adjourned on the 23rd day of March, A. D. 1940, the Honorable William H. Atwell, United States District Judge for the Northern District of Texas, presiding, the Following proceedings were had and the following cause came on for trial and was tried, to-wit:

No. 88 Civil Action.

J. ROB GRIFFIN, Administrator with Will Annexed of the Estate of Robert D. Gordon, Deceased,

versus

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, ET AL.

—
AGREED STATEMENT UNDER RULE 76 RULES OF CIVIL PROCEDURE FOR THE DISTRICT COURTS OF THE UNITED STATES.

2 Filed August 1, 1940.

In the District Court of the United States for the Northern District of Texas, Dallas Division.

J. Rob Griffin, Administrator with Will Annexed, of the Estate of Robert D. Gordon, deceased, Substitute Plaintiff,

vs. Civil Action No. 88.
The Prudential Insurance Company of America, et al., Defendants.

(1) This suit was instituted by Mrs. Fannie V. Gordon (widow of Rober. D. Gordon) individually and as next

friend of her two minor children, against the Prudential Insurance Company of America, on a life insurance policy issued on the life of Colonel Robert D. Gordon, in the principal original sum of \$50,000.00. The plaintiffs were respectively, the widow and children of the insured, and sued as heirs under Texas law.

(2) The basis of this claim was that the estate of Gordon was entitled to recover the proceeds of the policy, and that the Insurance Company was preparing to pay the money over to certain persons who had no insurable interest.

(3) The Prudential Insurance Company answered by a Bill of Interpleader, which was allowed. The Insurance Company tendered the sum of \$37,462.11 into the Registry of the Court, and was allowed a fee for answering and was discharged with its costs. An interlocutory judgment was rendered against one of the claimants, Mrs. Gretchen McCoy Gordon, an ex-wife of the insured; and the other defendants to the Bill of Interpleader, John D. McCoach, Trustee, John D. McCoach, Max I. Brenwasser, George B. Cody, Nathan Schweiger, Alfred D. Leonard, Frederick W. Mead and Julius A. Bates, answered and claimed the proceeds of the policy, asking that said proceeds be adjudged in favor of John D. McCoach, Trustee.

3 (4) Subsequently, J. Rob Griffin was appointed administrator with the will annexed, of the estate of Gordon, and was substituted in the cause as plaintiff.

(5) Mrs. Gordon then intervened on her own behalf, claiming a one-eighth (1/8) of the proceeds of the policy by a contract with the other defendants.

(6) The material and relevant facts in the case are as follows: In the year 1922 the last named defendants, here-

inafter referred to as "members," formed in the State of New York a common law association called the "Middletown Tex Oil Syndicate." This syndicate purchased oil and gas leasehold interests in certain leases being developed by Gordon.

(7) Gordon took out a term insurance policy for \$50,000.00 in the Prudential Insurance Company, convertible to a whole life policy at the end of seven years, and named the Middletown Tex Oil Syndicate as the beneficiary. Prior to the formation of the syndicate some of the members had loaned money to Gordon, as well as invested in his oil enterprises in the State of Texas. The syndicate ceased operations as such approximately two years after the policy had been issued. The application for the policy was signed by Gordon in the State of New York, and forwarded to the home office of the Prudential Insurance Company in the State of New Jersey, and there acted upon, and the policy was delivered in the State of New York. Prior to the issuing of the policy and thereafter, the members advanced considerable money to Gordon, and the premiums on the policy were paid by the members of the syndicate at Gordon's request, upon his agreement to repay the syndicate. Premiums were paid on the policy by the syndicate, in accordance with this agreement and were never repaid by Gordon.

(8) In the year 1924 the Middletown Tex Oil Company ceased to do business, due to financial reverses. The seven members of that syndicate formed a new association called the "Protection Syndicate," with written articles of association which are attached as Exhibit "A".

4 (9) The members, with the consent of Gordon, then procured a change of beneficiary, naming themselves as beneficiaries of the policy. Thereafter the Protection Syndicate, operating under its articles of asso-

ciation, continued to pay the premiums upon the term policy until the expiration of the term. Loans and advancements were made by the members to Gordon after the formation of the syndicate, which Gordon promised to repay. No loan or advancement was ever repaid by Gordon.

(10) One of the beneficiaries, Nathan Schweiger, was likewise a soliciting agent for the Prudential in Middletown, N. Y. The syndicate obtained the consent of Gordon, and he applied to convert the \$50,000.00 term policy into a \$50,000.00 whole life policy, as he had the right to do under the provisions of the term policy, copies of these policies being lettered respectively "B" and "C", and attached hereto as exhibits. The form of the new policy was not in existence at the time of the issuance of the term policy, but was a new form originated by the Prudential Insurance Company after the term policy had been issued. The necessary papers for effecting this change were executed by Gordon in the State of New York, and from there forwarded to the Home Office of the Company in New Jersey, and from there delivered to the beneficiaries in New York, and the syndicate paid the premiums on the new policy as it had upon the old, except a quarterly premium of \$260.00 which was paid by Gordon. In both of the policies the right to change the beneficiary was at all times, by the terms of the policy, in Gordon, the insured, upon written application and surrendered of the policy to the company for indorsement. The policy was at all times in the possession of one of the seven men in New York state.

(11) In the year 1932 Gordon wrote the Insurance Company that he desired to change the beneficiary of the policy to his wife, Mrs. Fannie V. Gordon. The policy had remained in the possession of the syndicate, and they were

acquainted with this request both by Gordon and the Prudential. No change was made at this time. At the time the original policy had been issued, and at all times subsequent, Gordon had been a citizen and inhabitant of

5 the State of Texas, and at the time mentioned he was a resident of Tyler, Smith County, Texas.

Subsequently, Colonel Gordon, in September 1934, and the syndicate entered into negotiations with reference to the surrender of his rights in the policy to the beneficiaries.

(12) Gordon proposed to give up his rights to the policy for a certain amount of cash. The members refused this offer. During the negotiations the members of the syndicate in New York, at a meeting of the Association, commissioned Schweiger to offer Colonel Gordon a counter proposition substantially as follows: That the syndicate would pay to Gordon one-eighth of the proceeds of the policy received during his lifetime, and one-eighth of the proceeds to his wife at his death, if Gordon would relinquish his right to change the beneficiary and to receive the disability payments and all other rights under the policy, to the beneficiaries. This offer was communicated through the United States mail by letter posted in Middletown, N. Y., and received by Gordon in Tyler, Texas. About the same time this communication was sent to Gordon, inquiry was made by mail of the home office of the Prudential at Newark, N. J., as to whether it would consent to the arrangement, and if so, what forms would be required.

(13) The Prudential Insurance Company advised the Syndicate as follows:

November 1, 1934.

Pol. 3913426 Gordon.

Yours of Oct. 20.

Mr. J. R. Quigley, Supt.,
Middletown, N. Y.

Attention: Agent N. Schweiger.

Dear Sir:

We have carefully reviewed the papers which we have on file and have again noted the questions raised in Agent N. Schweiger's letter of October 5 regarding a change of beneficiary and the insertion of an Extension of Rights Clause in this policy, and we have taken the matter up with our Law Department. After careful consideration it

has been decided that we would be willing to
6 make a change of beneficiary to John D. McCoach
as trustee beneficiary and insert our so-called
Extension of Rights Clause in the policy in his favor, thus
placing the contract under his absolute control. We are
enclosing amendments providing for this arrangement.
Both forms should be signed by the insured, and as evi-
dence of the approval of the Protection Syndicate of those
changes, all the members of the syndicate should also sign
the forms. All signatures should be properly witnessed,
and the papers should then be returned to this Department,
together with the policy for indorsement.

If the policy is indorsed with the enclosed amendments
and it becomes a valid claim by the death of the insured
payment in the natural course of business will be made
to John D. McCoach as trustee. The policy will also be
controlled by John D. McCoach as trustee, and if he pre-
deceases the insured a successor trustee could be appointed
by the Court having jurisdiction in the premises.

Yours truly,

(S.)

J. C. WATERS,

Mathematician.

7

(14) In the meantime, Colonel Gordon had accepted the proposal of the beneficiaries theretofore transmitted to him by Schweiger by letter posted in Tyler, Texas, and received by Schweiger in New York.

(15) During the course of these negotiations Gordon acquainted the members of the syndicate with the fact that he was suffering from hyper-tension and other ailments which he felt had rendered him totally and permanently disabled, and entitled him to the disability payments under the terms of the policy, and that he had had himself examined by the United States government physician for the purpose of making a claim under his war risk policy.

(16) After the receipt of the forms, Exhibits "D" and "E", furnished by the Prudential, Schweiger transmitted them from Middletown, N. Y. to Tyler, Texas, for Colonel Gordon's signature. They were there executed by Colonel Gordon before a notary public in Tyler, Texas, and returned to Middletown, N. Y., where they were executed by the parties residing there, from whence they were sent by Schweiger, with the policy, to the home office at Newark, N. J., and subsequently the forms were indorsed on the policy and it was returned directly from New Jersey to the beneficiaries in New York.

7 (17) By this last change of beneficiary (which was made in this form at the suggestion of the Insurance Company) the beneficiary was made John D. McCoach, Trustee, who was trustee for the benefit of the former beneficiaries.

(18) Thereafter, three of the original members of the syndicate assigned their interest in the policy as follows:

Max I. Brenwasser on June 6, 1935, to Harry G. Nelson, in consideration of the payment of \$500.00 to Brenwasser;

Julius A. Bates, on June 24, 1936, to George E. Bradnack, in payment for a debt, the amount of which he did not state, and with the further agreement on the part of the assignee to pay Bates \$500.00, if, as and when Bradnack received payment under the policy; (to the extent of Bates' \$500.00 retained interest this assignment is not questioned, but only the part claimed by Bradnack);

Alfred D. Leonard, on November 20, 1934, to his son, LeRoy E. Leonard. There was no monetary consideration for this assignment, but it was made because Alfred D. Leonard was unable to continue to pay his share of the premiums on the policy.

(19) After these assignments were made, the assignees paid their pro rata share of the premiums—in the case of Nelson \$235.28; in the case of Brenwasser \$235.28; in the case of LeRoy Leonard \$599.71—until Colonel Gordon became totally and permanently disabled, and proof of that fact was furnished to the Prudential Life Insurance Company by Gordon, whereupon, pursuant to the provisions of the contract, the company waived further payment of premiums, and began payment of the disability benefit of \$500.00 per month, which payments continued until the death of Colonel Gordon, April 17, 1939.

(20) The assignees Nelson, Bradnack and Leonard received out of these payments the sum of \$1,629.07 each.

(21) The procedure by which these payments were made was that the \$500.00 per month was paid to John D. McCoach, Trustee, and that he paid one-eighth of that sum to each of the four original members of the syndicate, and one-eighth to each of the assignees mentioned, and one-eighth to Colonel Gordon. Under this policy, the amount

8 of disability payments was deductible from the face amount of the policy, \$50,000.00, and there remained due on the policy the sum of \$37,462.11, which was tendered into the Court by the Insurance Company.

(22) The original members of the syndicate and the assignees prayed that judgment be rendered in favor of John D. McCoach, as trustee for them, and it is agreed that McCoach having recovered judgment as trustee intends to pay over the funds to the assignees to the extent of their one-eighth interest each.

(23) The lower Court found from the evidence that each of the original members of the syndicate had made loans and advancements to Gordon in excess of the amount of the disability payments which they had received, and in excess of the amount of their respective shares of one-eighth each out of the funds in the Registry of the Court.

(24) But as to the assignees of the original members of the syndicate, it is stipulated that none of the assignees of interest in the policy knew Colonel Gordon, nor ever made any loans or advancements to him, and in fact never had any business dealings with him (except payment of premiums on the policy) and the assignments executed by Bates to Bradnack, and Brenwasser to Nelson, are identical to a copy of the latter, attached hereto as Exhibit "F". No formal assignment was made by the elder Leonard to LeRoy E. Leonard. It is likewise undisputed that none of the assignees were related to Gordon by blood or marriage.

(25) The findings of the lower Court are attached as Exhibit "G", and are not disputed as to the facts, that appellant contends that Gordon's Texas acts make the changed policy to McCoach Trustee a Texas contract. *except*

(26) It is agreed that the original owners of the assigned interest had an insurable interest in the life of the insured by virtue of loans and advancements.

(27) The original members of the syndicate at the time they assigned their interest in the policy, were acquainted with the probability that Gordon would shortly have to apply for disability benefits under the policy.

9 (28) A copy of the final judgment marked Exhibit "H", a copy of the notice of appeal filed June 13, 1940, marked Exhibit "I", and a copy of the order enlarging the time for filing this record, marked Exhibit "J", are attached.

(29) This appeal involves only the correctness of the judgment of the trial Court concerning the persons entitled to receive the assigned interests hereinabove referred to.

The Plaintiff's contention on this appeal are:

I. That the trustee McCoach claimed as beneficiary under a Texas contract, and that his assignment and change of beneficiary was governed by the law of Texas, and as incident thereto, McCoach as trustee could only claim in that capacity for persons having an insurable interest under the law of Texas; and inasmuch as the assignees had no such interest under Texas law, McCoach was not entitled to recover in their behalf.

II. That even if the contract whereby Gordon relinquished his claim in return for a one-eighth interest in the policy to himself and at his death to his wife, be construed to be governed by the law of a state other than Texas, that the Court in which the Bill of Interpleader was filed, sitting in the State of Texas, even though a United

States Court, was bound by the public policy of the commonwealth in which it sat, and could not apply a different rule than would be applied in a State Court of concurrent jurisdiction; that the public policy of Texas inhibits the collection of proceeds of insurance policies by persons having no insurable interest, except as trustee for the estate or heirs, and that this public policy intervened and required a judgment against McCoach for the benefit of the three assignees of members of the syndicate. Hence the plaintiff as administrator, was entitled to recover, inasmuch as he represented the estate and the assignees claimed in their proper person, and not as trustees for the estate.

III. The facts show that the assignees, at the time they acquired the interest of the original members in the policy,
 paid a consideration out of proportion to the interest
 10 which they purchased in the policy, under circumstances which show that they were necessarily more interested in the death of the insured than in his continued existence; and in effect their participation in the syndicate amounted to nothing save a gambling transaction.

The foregoing stipulation of the parties having been agreed upon by the respective attorneys of record under the provisions of rule 76, is this day signed and presented to the Judge who tried the case for his approval.

JOS. W. BAILEY, JR.,
 C. J. SHAEFFER,
 Attorneys for J. Rob Griffin,
 Administrator,
 CARL B. CALLAWAY,
 FRANK C. BROOKS,
 Attorneys for Cross-Defendants.

ORDER OF APPROVAL.

The foregoing stipulation, with its Exhibits, have been presented to the Court, duly approved by opposing counsel, is found to conform to the truth. And the Court further finds that no additions are necessary to fully present the questions raised by the appeal, and the stipulation is hereby approved; including the photostatic copy and the policy, the Clerk is directed to certify it as the record on appeal.

Done at Dallas, Texas, this the 1st day of August, A. D. 1940.

WM. H. ATWELL,
U. S. Dist. Judge.

11

EXHIBIT A.

Copy.

Protection Syndicate.
Middletown, N. Y.

Articles of Association.

We, the undersigned, residents of Middletown, N. Y., do hereby associate ourselves together under the name and title of the Protection Syndicate which is organized for the sole purpose of paying the Premiums on a Life Insurance Policy No. 3913426, dated March 29th, 1922, for \$50,000.00, issued by the Prudential Insurance Company to Robert D. Gordon and to receive the compensation due in case of his death.

We all and severally agree and do hereby pledge ourselves to pay into this Syndicate our prorata share of all premiums that may become due upon the said policy and

we further agree that whatever sum shall be paid upon the said policy by the Prudential Insurance Company shall be divided pro rata among the seven members of this Syndicate, their administrators, executors or assigns.

It is further agreed that if at any time during the life of the said policy that if any of the syndicate members shall be unable to pay their pro rata premiums or shall withdraw from the Syndicate that the remaining members may keep the premiums paid up, and in such case it is provided that whenever the \$50,000.00 insurance is paid that such sums as have been paid by the said withdrawal or suspended members as pro rata premiums shall be refunded to such withdrawal or suspended members, their administrators, executors or assigns and the excess or profit, if any, shall belong to the members then in good standing.

And we further designate and appoint John D. McCoach to serve as Secretary and Trustee of this Syndicate, with full authority to pay all maturing premiums on said policy and to receive and distribute all monies that may be paid upon the aforesaid policy and to sign all notes, receipts or obligations for the Syndicate, and he shall serve for such term or terms and be subject to the order of the majority of the subscribers.

In witness whereof we have this 28th day of March, 1924, set our hands and seals.

(Signed):

MAX I. BRENWASSER, (L. S.)
JULIUS A. BATES, (L. S.)
FREDERICK W. MEAD, (L. S.)
JOHN D. MCCOACH, (L. S.)
GEORGE B. CODY, (L. S.)
NATHN SCHWEIGER, (L. S.)
ALFRED D. LEONARD. (.....)

Witness:

(S.) J. C. DEWA....

EXHIBIT D.**Copy.**

Prudential Insurance Company of America,
Incorporated under the Laws of the State of New Jersey.

Edward D. Duffield, Presdt:

Request for Amendment of Ordinary Policy Contract.

Ordinary Policy Department.

October 30th, 1934.

The Prudential Insurance Company of America is hereby authorized and requested to amend contract for insurance on the life of Robert D. Gordon, under policy No. 3913426, issued the 29th day of March, 1922, as follows:

Indorse the following clause on the Policy:

Change of Beneficiary.

At the request of the insured and dated October 30, 1934, it is specially agreed that if this Policy shall become a claim by the death of the Insured the amount of insurance then payable on accordance with the terms of the Policy shall be payable as follows, and not as heretofore provided:

To John D. McCoach, Trustee, Beneficiary.

It is further agreed that the Prudential Insurance Company of America shall not be responsible for any act or omission of said Beneficiary as Trustee, and that payment to said Beneficiary shall fully discharge said The Pru-

dential Insurance Company of America from any and all liability whatsoever under this policy, and said last mentioned Company may assume that said Beneficiary is acting and continues to act as Trustee until valid notice in writing to the contrary is given to said The Prudential Insurance Company of America at its Home Office in Newark, New Jersey.

If the above Policy has been assigned prior to this change of Beneficiary, such change is made subject to all rights created by such assignment.

And in consideration thereof, it is hereby agreed that these charges shall be an amendment to and form a part of the original application and Policy. It is also agreed that this amendment shall not be operative until the Policy shall have been indorsed or rewritten in accordance here-with by the Company.

Each person executing this form represents The Prudential Insurance Company of America that he (or she) has attained majority according to the laws of the State (or Province) in which he (or she) resides, or that he (or she) is empowered by law to execute this form even though majority has not been attained.

(S.) ROBERT D. GORDON.

(Signature of Insured),
(District) Middletown.

Witness:

(S) LINDA MARTIN.

What Agent adjusted change:

(S.) J. R. QUIGLEY, Supt.

13 State of Texas,
County of Smith.

Before me, the undersigned authority, on this day personally appeared Robert D. Gordon, who certified that he executed the foregoing of his own free will and for the consideration herein mentioned.

(S.)

LINDA MARTIN,

Notary Public in and for Smith
County, Texas.

My Commission expires June 1st, 1935.

(Date) November 20, 1934.

Protection Syndicate:

JOHN D. McCOACH,
MAX I. BRENWASSER,
NATHAN SCHWEIGER,
GEORGE B. CODY,
ALFRED D. LEONARD,
FREDERICK W. MEAD,
JULIUS A. BATES.

Witness:

J. R. QUIGLEY, Supt.

14

EXHIBIT E.

Prudential Insurance Company of America.

Home Office, Newark, N. J.

Incorporated under the Laws of the State of New Jersey.

Edward D. Duffield, Presdt.

Request for Amendment of Ordinary Policy Contract.

Ordinary Policy Contract.

October 30, 1934.

The Prudential Insurance Company of America is hereby authorized and requested to amend contract for insur-

ance on the life of Robert D. Gordon, under policy No. 3913426, issued the 29th day of March, 1922, as follows:

Provisions as to Rights, Benefits and Advantages under the Policy.

All rights, benefits and advantages specifically given to the Insured by the terms of this Policy of which, except for the provisions of this Rider, might be exercised by the Insured, shall belong to and may be exercised by John D. McCoach, Trustee, or his successor in the trust, instead of the insured. Any and every exercise of such rights involving a change in the manner of payment of the proceeds of this Policy or a change of the Beneficiary or Beneficiaries to whom such proceeds shall be payable or a transfer of all of the rights, benefits and advantages hereby conferred to any other person, firm or corporation, shall be subject to the rights of any previous assignee of this Policy, shall be by written notice to the Company at its Home Office in Newark, New Jersey, and shall become effective only when an indorsement or rider setting forth such change or transfer is placed on or attached to this Policy by the Company.

It is understood and agreed that:

- (a) Anything in this Rider to the contrary notwithstanding, payment of the proceeds of this policy upon the death of the Insured, or, if this be an endowment policy, when the same shall mature either as an endowment or by the death of the insured, shall (subject to the rights of any previous assignee) be made to the person or persons, firm or corporation and in the manner specifically provided on the first page of this Policy, unless otherwise provided by indorsement on or by rider (not including this Rider) attached to this Policy by the Company and in effect when such proceeds become payable;

(b) If the rights, benefits and advantages hereby conferred be hereafter transferred, the exercise of any of such rights, benefits or advantages by the transfer prior to such transfer shall be effective as against the transferee on and after said transfer; and,

(c) That The Prudential Insurance Company of America shall not be responsible for any act or omission of any Trustee referred to above as Trustee, and that any payment made as provided in this Policy shall fully discharge
said The Prudential Insurance Company of Amer-
15 ica from any and all liability for such payment,
and furthermore that said last mentioned Com-
pany may assume that the above specifically named Trustee is acting and will continue to act as such until valid notice in writing to the contrary is furnished said last mentioned Company at its Home Office in Newark, New Jersey.

And in consideration thereof, it is hereby agreed that these changes shall be an amendment to and form a part of the original application and Policy. It is also agreed that this amendment shall not be operative until the Policy shall have been indorsed or rewritten in accordance herewith by the Company.

Each person executing this form represents to The Prudential Insurance Company of America that he (or she) has attained to majority according to the laws of the State (or Province) in which he (or she) resides, or that he (or she) is empowered by law to execute this form even though majority has not been attained.

(S.) ROBERT D. GORDON.

(Signature of Insured.)

Witness:

(S.) LINDA MARTIN.

What Agent adjusted change:

(S.) J. R. QUIGLEY.

(Date) Nov. 21/34.

Protection Syndicate:

JOHN D. McCOACH,
MAX I. BRENWASSER,
NATHAN SCHWEIGER,
GEORGE B. CODY,
ALFRED D. LEONARD,
FREDERICK W. MEAD,
JULIUS A. BATES.

Witness:

J. R. QUIGLEY, Supt.

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EXHIBIT F.

Whereas, a life insurance policy has been issued heretofore to the Protection Syndicate of Middletown, New York, an association of individuals, now consisting of J. D. McCoach, George B. Cody, James A. Bates, Dr. A. D. Leonard, Fred W. Meade, Nathan Schweiger and Max Brenwasser, beneficiaries, on the life of Robert D. Gordon, of Tyler, Texas, in the amount of \$50,000, which life insurance policy, #3913426, was issued by the Prudential Insurance Co. of America on March 29th, 1922, and rewritten on the subsequent date of March 30th, 1929, and Whereas, Max Brenwasser is desirous of selling, assigning and transferring all his right, title and interest to said insurance policy heretofore mentioned to Harry Nelson, of 148½ Linden Avenue, Middletown, New York, for value received, and Whereas, the Protection Syndicate, by its individual members at a meeting duly called for the purpose of acting on the said assignment, has consented for the association and its respective members that Max Brer wasser may sell his re-

spective interest in the said life insurance policy to the said Harry Nelson,

Now, Therefore, I, Max Brenwasser, of Middletown, New York, for and in consideration of the sum of \$500.00, receipt whereof is hereby acknowledged, do hereby assign, transfer and set over absolutely unto Harry Nelson, all my right, title and interest in the aforesaid life insurance policy and all benefit and advantage to be derived therefrom, and I, the assignor, covenant as follows:

1. That the aforesaid life insurance policy is in full force and effect and that I have an interest to the extent of one-seventh in the proceeds thereof and that my respective share is free and clear of all liens, except that there is a loan of \$1,943.00 heretofore granted, approved and advanced by the Insurance Company to the Protection Syndicate for a payment of premium on said policy and which this assignment is subject to.

17 2. That I have made no other transfer or assignment of my interest in said life insurance policy nor have I executed or delivered any power of attorney with respect to said policy.

3. That no proceedings in bankruptcy or insolvency has ever been instituted by or against me nor is any such proceeding now pending.

4. That I will, from time to time, at the expense of the assignee, make, execute, or cause to be made, or executed, such reasonable assurances, acts and instruments as may be requested by such assignee, for the more effectual confirmation of this assignment.

5. That I will forever warrant and defend the assignee's title to the aforesaid policy of life insurance.

In Witness Whereof, I have hereunto set my hand and seal, in the City of Middletown, New York, this 6th day of June, 1935.

(S.)

MAX I. BRENWASSER. (L. S.)

In Presence of:

(S.) A. J. VERAEDI.

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EXHIBIT G.

(Title Omitted.)

March 15, 1940.

The Court:

It is an interesting case, gentlemen, that runs back through the years. I have watched these witnesses as they have testified and tried to get at the proper weight to be given to what they said. That is what the Court would charge the jury it had the right to do and what it must do in the event there were contradictions or apparent contradictions in the testimony.

My estimate of them is that they were not learned nor adept at, or, in business affairs outside of their own special interests, and while one of them as been subject to rather careful scrutiny because of his apparent remissness of memory, I believe that they have told the truth. I think

they made the advancements, and that one of
19 their number set up what he thought was a sufficiently efficient memorandum of what was coming in in the name of Middletown Tex Syndicate, but which memorandum is quite incomplete and insufficient to show the transactions as they really were.

I think large calls were made for money, and, their own resources being limited, they borrowed, which I think shows they stood well, and their testimony is that they paid those obligations. Those who testified, testified that they paid their portion of them. Those borrowed moneys

passed into this Middletown Company at first, in some instances, and, for the first year or two were partly used to pay premiums on this policy. These men testifying all the time, that they were paying these premiums, and, that worried me a great deal, after Mr. Bailey exhibited that book, but I think that that was Mr. Bates' method of keeping the payments that went to the policy, and that he was keeping it for those men. I cannot conceive of any other answer to it. Then the bookkeeping expert, or accountant, helps us out of that quandary somewhat by stating that the books were incomplete, and that they were made to balance by setting up, or, using them optionally, and that the notes, sometimes indicated in there, were paid by contributions, and things of that sort, so, that, even

when they operated in that manner, it was an
20 operation with and, for, their friend, Gordon,
whom they had met in New York through a kins-
man, whom he had there. They thought he was in El-
dorado in Texas, that there was a chance to make money,
and they relied a great deal upon his representations, and
placed the money for him. He was not an unlearned
man in that sort of business, evidently. He was somewhat
of a promoter, not in any bad sense, doubtless, but he
knew that it was necessary in order to get money, to have
confidence in the minds of those from whom he was to
get it, and that confidence he sought to continuously keep
at par by saying, "I will protect you with a large insurance
policy," and, "by these assignments, and these interests,"
and things of that sort, which in the crudeness of their
commercial learning they sought to keep in somewhat of
a memorandum in the manner I have indicated.

It would be repetition of history which we have learned
in painful travail here for two, or, three days, to pass, in
lengthy review, from the Middletown to the Protective
Syndicate, and, then from the Protective Syndicate to Mc-
Coach as Trustee. There were these same ready and willing,
and somewhat unsophisticated New Yorkers who

were furnishing the money for his ventures in Texas, both to him and to his concerns.

Later, even though they had been doing this without any worthwhile return, they, themselves, feeling the limitations of necessity, responded to his limitations and gave him and his wife a one-eighth interest in this policy. Under that arrangement, more was given her than the one-eighth.

FINDINGS OF FACT.

I.

I find that this policy of insurance was a New York contract.

II.

That all of its changes, were made by the consent of those interested in it, and were made in the State of New Jersey and delivered in the State of New York afterward.

III.

I find that all of the premiums were paid by the present trustee and the men for whom he is trustee, save and except the sum of \$270.00, which was paid by Gordon.

IV.

I find that at the time of the taking out of the policy and during its entire life, there were substantial advancements and credits made by these men to the insured, such advancements included not only the payment of premiums, but also loans, and advancements, largely in excess of the amount of money now on deposit in this Court.

V.

I find that one-eighth of this sum, plus \$270.00 is the interest that belongs to Mrs. Gordon, and that she shall have that sum without deducting the \$1100.00 which was advanced to her. The \$270.00 to go to the Estate.

VI.

I find that at the time that that advancement was requested, she was a married woman and in that request her husband, so far as I have been able to discover, did not join, so as to make it a contract which the Court could recognize, as against her.

CONCLUSIONS OF LAW.

As a conclusion of law, I find that under the law of the State of New York neither an insurable interest, as we understand it, nor the relation of debtor and creditor, is necessary, but that even if it were necessary, those relations existed.

It follows from what I have said, of course, that the decree should go for the trustee, and those whom he represents, minus, of course, \$270.00, and one-eighth of the amount I have mentioned here.

Mr. Bailey:

Will the Court give us some finding with reference to the gentlemen who hold the assignments?

The Court:

I think with reference to those men who hold assignments, that that is a matter to be litigated, if anyone wishes to litigate it, between the one who assigned and the one who is the assignee—the as-

signor and assignee. Take one matter, Mr. Brenwasser here, he assigned, in his need for funds, for \$500.00 to Nelson, I think it was, and the trustee McCoach will pay this fund to those who are entitled to receive it, and under the terms of the policy, he is guided in those payments by the names of the parties for whom he is trustee.

Mr. Bailey:

Will the Court make some character of finding as to whether or not those three gentlemen have an insurable interest, for the purpose of appeal?

The Court:

Well, there is no testimony, as I recall it, that either of the three assignees, paid any money to Gordon at any time, or, were interested with him in these investments, or, in his business.

I believe that covers it. Will you prepare a decree to be ok'd by Mr. Bailey, or, Mr. Shaeffer, saving such exceptions as they may wish.

24

EXHIBIT H.

Judgment.

(Title Omitted.)

On this the 18th day of March, A. D. 1940, came on to be heard the above styled and numbered cause, and came plaintiff J. Rob Griffin, Administrator with Will Annexed of the Estate of Robert D. Gordon, deceased, by his attorneys, and came N. Winkler, intervenor, by his attorneys, and came Mrs. Fannie V. Gordon, intervenor, in person and by her attorneys, and came the cross-defendants John D. McCoach, trustee, John D. McCoach, George B. Cody, Frederic W. Mead and Max I. Brenwasser in person, and came all of the cross-defendants by their attorneys.

All parties announced ready for trial, and thereupon hearing was held.

It appearing to the Court

(a) That the law and the facts are with the cross-defendant John D. McCoach as trustee, and with the other cross-defendants by and through John D. McCoach as trustee;

(b) That said cross-defendants agreed in open Court that out of any recovery awarded to them, one-eighth (1/8) thereof might be adjudged in favor of the intervener Mrs. Fannie V. Gordon;

(c) That in addition, intervener Mrs. Fannie V. Gordon should receive the sum of Two Hundred and Sixty Dollars (\$260.00), by agreement in open Court; and

25 (d) That the cross-defendants take nothing as against the intervener Mrs. Fannie V. Gordon as to their claim of One Thousand Twenty-two Dollars (\$1022.00).

It is therefore Ordered, Adjudged and Decreed

(a) That out of the funds on deposit with the Court, namely, Thirty-seven Thousand Four Hundred Sixty-two and 11/100 Dollars (\$37,462.11), the Clerk shall retain the sum of Three Hundred Seventy-four and 62/100 Dollars (374.62);

(b) That out of the funds on deposit with the Court, Mrs. Fannie V. Gordon shall take and receive the sum of Four Thousand Eight Hundred Thirty-three and 43/100 Dollars (\$4,833.43);

(c) That out of the funds on deposit with the Court, John D. McCoach as trustee shall take and receive, for the benefit of the other cross-defendants, the sum of Thirty-one Thousand Seven Hundred Fifty-four and 06/100 Dollars (\$31,754.06);

(d) That cross-defendants take nothing as to their counter-claim against intervener Mrs. Fannie V. Gordon

in the amount of One Thousand Twenty-two Dollars (\$1022.00);

(e) That the Clerk of the Court pay, and he is hereby directed to pay over and deliver the funds on deposit in the registry of the Court as hereinabove provided for;

(f) That plaintiff J. Rob Griffin, Administrator with Will Annexed of the Estate of Robert D. Gordon, deceased, and intervener N. Winkler, take and receive nothing;

(g) That all costs in this proceeding be taxed against J. Rob Griffin, Administrator with Will Annexed of the Estate of Robert D. Gordon, deceased, and intervener N. Winkler, jointly and severally, for which execution shall issue;

To all of which the substitute plaintiff, J. Rob Griffin, Administrator with Will Annexed of the Estate of Robert D. Gordon, deceased, and the intervener N. Winkler, duly Except, except as to Mrs. Fannie V. Gordon.

Done at Dallas, Texas, this 18th day of March, A. D. 1940.

WM. H. ATWELL,
U. S. District Judge.

26 Approved as to Form:

(Signed) BAILEY & SHAEFFER,

Attorneys for J. Rob Griffin,
Administrator with Will An-
nexed for Estate of Robert D.
Gordon, deceased.

(Signed) PAT H. CANDLER,
Attorney of intervener Fannie
V. Gordon.

(Signed) CLARK & STEGALL,
Attorneys for intervener N.
Winkler.

(Signed) CALLAWAY & REED,
Attorneys for cross-defendants
John D. McCoach, et al.

EXHIBIT I.

Copy.

In the District Court of the United States for the Northern District of Texas, Dallas Division:

J. Rob Griffin, Administrator with Will Annexed of the Estate of Robert D. Gordon, Deceased, Substitute Plaintiff,

vs. No. 88 Civil Action.

The Prudential Insurance Company of America, et al., Defendants.

Notice of Appeal.

Filed June 13, 1940.

To: John D. McCoach, Trustee, John D. McCoach, Max I. Brenwas er, George B. Cody, Nathan Schweiger, Alfred D. Leonard, Frederick W. Mead, Julius A. Bates, Harry G. Nelson, George E. Broadnack, LeRoy E. Leonard, and their attorneys of record, Callaway & Reed, Frank C. Brooks.

Mrs. Robert D. Gordon, and her attorney of record, Pat H. Candler.

N. Winkler, and his attorneys of record, Clark & Stegall:

You and each of you will take notice that the plaintiff, J. Rob Griffin, Administrator of the Estate of Robert D. Gordon, deceased, desires to take an appeal to the Circuit Court of Appeals for the Fifth Circuit sitting in New Orleans, from that certain judgment of the United States District Court for the Northern District of Texas rendered in favor of John D. McCoach, Trustee, on the 18th day of

28 March, A. D. 1940, wherein the said John D. Mc-Coach was awarded the sum of Thirty One Thousand, Seven Hundred and Fifty Four Dollars and Six Cents (\$31,754.06) being funds on deposit in the registry of said Court, to the use and benefit of the above named cross-defendants.

You are advised that the plaintiff herein desires to take an appeal from said judgment in favor of John D. Mc-Coach, Trustee, for the use and benefit of the other parties above named.

BAILEY & SHAEFFER,
 By C. J. SHAEFFER,
 Attorneys for J. Rob Griffin,
 Administrator, Substitute
 Plaintiff.

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EXHIBIT J.**Order.**

(Title Omitted.)

On this the 19th day of July, A. D. 1940, came on to be heard the joint motion of the Appellant, J. Rob Griffin, Administrator, and the Appellees, John D. McCoach, et al.

And it is considered by the Court that same should be granted, and the time for filing the record in the Circuit Court of Appeals is enlarged from thirty days from this date, to-wit, the 18th day of August, 1940.

WM. H. ATWELL, Judge.

30 United States of America,
Northern District of Texas. ss.

I, GEORGE W. PARKER, Clerk of the United States District Court for the Northern District of Texas, do hereby certify that the foregoing is a true and correct copy of the Agreed Statement under Rule 76 in cause No. 88 Civil, J. Rob Griffin, Administrator with the Will Annexed of the estate of Robert D. Gordon, Deceased, plaintiff and The Prudential Insurance Company of America, et al. are defendants, together with Exhibits B and C, sent up pursuant to subdivision I, Rule 75, as shown by Judge's fiat, as fully as the same now remain on file and of record in my office at Dallas, Texas.

Witness my hand officially and the seal of said Court at Dallas, Texas, this the 2nd day of August, A. D. 1940.

(Seal)

GEORGE W. PARKER,

Clerk, U. S. District Court,
Northern District of Texas,

By RAMELLE PAUL,

Deputy Clerk.

[fol. 31] That thereafter the following proceedings were had in said cause in the United States, Circuit Court of Appeals for the Fifth Circuit, viz:

Argument and Submission

Extract from the Minutes of November 7th, 1940

No. 9652

J. ROB GRIFFIN, Administrator of the Estate of Robert D. Gordon, Deceased,

versus

JOHN D. McCOACH, Trustee, et al.

On this day this cause was called, and, after argument by C. J. Shaeffer, Esq., for appellant, and Frank C. Brooks, Esq., for appellees, was submitted to the Court.

[fol. 32] **OPINION OF THE COURT—Filed December 9, 1940**

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 9652

J. ROB GRIFFIN, Administrator of the Estate of Robert D. Gordon, Deceased, Appellant,

versus

JOHN D. McCOACH, Trustee, et al., Appellees

Appeal from the District Court of the United States for the Northern District of Texas

(December 9, 1940)

Before Sibley, Holmes, and McCord, Circuit Judges

HOLMES, Circuit Judge:

This is a contest over the proceeds of an insurance policy issued on the life of Colonel Robert D. Gordon. John D. McCoach, as trustee for the men who organized the Middle-

town Tex Oil Syndicate and their assignees, claims the money as the beneficiary named in the policy; J. Rob Griffin, the administrator of the decedent's estate, claims a part of it in behalf of the heirs at law of Gordon. The insurer [fol. 33] and company, by interpleader, paid the amount due into the registry of the court, and has no interest in the controversy.

The issues presented on appeal can best be understood after a statement of the history of the policy. Colonel Gordon was a promoter during the beginning of the oil boom in Texas. He persuaded a group of seven men in the State of New York to furnish money for his ventures in Texas, both to him personally and to his promotional enterprises. To secure these advances, a term insurance policy for \$50,000 was purchased by the group on the life of Gordon. They then organized the Middletown Tex Oil Syndicate for the purpose of paying the premiums on the policy, and the syndicate was named as beneficiary. In 1924, the Middletown Company dissolved, and its members formed a new association called Protection Syndicate, which continued to pay the premiums and to make advances to Gordon. The policy was changed, with the consent of Gordon, to designate the individual members of the syndicate as beneficiaries in the place of the Middletown Company.

Within seven years from the date the policy was issued, it was converted into a whole life policy. The right to convert was given by a provision in the original policy, but the form of the new policy was originated by the insurer after the original policy was issued. Both policies allowed the insured the right to change the beneficiary at any time, by written application accompanied with a surrender of the policy for endorsement, but the policy was continually held by the syndicate. All premiums were paid by the syndicate except one quarterly premium of \$260 paid by Gordon.

In 1932, pursuant to an agreement between the insured and the beneficiaries, Gordon relinquished his right to disability benefits and to change the beneficiary, in consideration of a payment to him by the syndicate of one-eighth of the proceeds of the policy received during his lifetime, and the payment of one-eighth of the proceeds to his wife after his death. The policy was changed to conform to this agreement by naming John D. McCoach as trustee beneficiary, and inserting an extension-of-rights

clause therein in his favor, thereby placing the contract under his absolute control.

In the years 1934, 1935, and 1936, three of the original members of the syndicate assigned their interest in the policy to persons who did not know Colonel Gordon, had advanced no money to him, were not related to him, and had not dealt with him in any way except to pay their pro-rata part of the premiums maturing on the policy between the dates of the assignment to each and the death of the insured. For some time before his death, Gordon was paid disability benefits, which payments were divided as provided by the agreement, one-eighth to Gordon and seven-eighths to the beneficiaries and the assignees.

The policy of insurance was applied for by Gordon in the State of New York, and it was delivered to him there from the home office of the insurer in New Jersey. The term policy was converted into a full life policy upon papers executed in New York, and that policy was delivered in New York. The change in the operation of the policy which placed the policy under the control of the trustee was effected by papers executed by Gordon in Texas and forwarded to and executed by each of the beneficiaries in the State of New York. These papers were then sent to the insurer in New Jersey, which returned the executed papers to the trustee in New York. The interpleader was filed in a United States District Court in Texas.

[fol. 35] The actual dispute lies between the administrator and the assignees of the beneficiaries. It is claimed that those who hold their interest by assignment, having had no dealings or relationship of any kind with the insured, had no insurable interest in Gordon's life and could not have a policy thereon. Two reasons are advanced to support this claim: that the agreement in 1932, under which McCoach, as trustee, became the beneficiary, was a Texas contract and was governed by the law of that state, which law limited recovery to those having an insurable interest; and, whether or not it was a Texas contract, the district court in which the interpleader was filed sat in Texas and was bound by the public policy of that state, which did not permit anyone, not acting in a representative capacity, to collect the proceeds of insurance policies on a life in which they had no insurable interest.

The policy of insurance was applied for in the State of New York, and was delivered in New York; and it is con-

ceded that it was governed by the laws of that state. The conversion of the term policy into a full life policy, the change of beneficiary, and the assignments of interests in the policy were made in accordance with clauses in the policy specifically providing therefor. These changes were made by the insurer in the discharge of obligations incurred in and outstanding by virtue of the original insurance contract. Such changes do not constitute new contracts, and do not result in changing the law applicable to the policy.¹

Appellant concedes, and the court below found as a fact, that the original beneficiaries of the insurance each had insurable interests. If no assignments had been made prior to the maturity of the policy, the beneficiaries would have been entitled to seven-eighths of the proceeds thereof. This would have been true whether the New York law, [fol. 36] which required no insurable interest, or the law of Texas, which did require it, was applied. The question, then, is whether the assignments, made from beneficiaries entitled to receive the proceeds to assignees lacking an insurable interest, vest in the assignees the right to recover their pro-rata part of the insurance proceeds.

Under the terms of the policy, a New York contract, no restrictions were placed upon assignments relating to insurable interest. None was created by the laws of New York. Each of the assignments was executed and delivered in New York by residents of that state to other residents. They were New York contracts and valid under its laws. To apply the laws of Texas to the New York contracts would constitute an unwarranted extra-territorial control of contracts and regulation of business outside of Texas in disregard of the laws of New York; this is not changed by the trial of the suit in a court sitting in Texas. *Overby v. Gordon*, 177 U. S. 214, 222; *New York Life Insurance Co. v. Head*, 234 U. S. 149; *Bond v. Hume*, 243 U. S. 15; *Aetna Life Insurance Co. v. Dunken*, 266 U. S. 389, 399.

We are of the further opinion that it is immaterial, in so far as the decision of this case is concerned, whether the law of Texas or the law of New York be applied. The reasoning by which this conclusion is reached also disposes of the last two contentions of the appellant. In the present case, the insurer acknowledged liability and paid the money

¹ *Aetna Life Insurance Co. v. Dunken*, 266 U. S. 389; *Dannhauser v. Wallenstein*, 169 N. Y. 199.

into court. This being so, not only does the objection of wagers disappear, but also the claimed principle of public policy.²

In those jurisdictions where the public policy is opposed to the grant of insurance proceeds to persons lacking insurable interest, the consistent purpose of the policy is to prevent wagering policies. The two contentions of appellant which advance the "public policy" and "gambling trans-[fol. 37] actions" claims must stand or fall together.³ Since a fair and proper insurable interest was present when the policy was issued, and it was taken out in good faith, the purpose of the rule condemning wagers was sufficiently satisfied.⁴ Modern policies of insurance are no longer mere indemnity contracts, but are property and have property values.⁵

The principle of public policy being out of the case, no one but the insurer was privileged to object for the lack of an insurable interest.⁶ The insurer made no objection, and paid the full amount of its liability. The policy was valid when issued, and remained valid for more than ten years. A valid policy is not avoided by the cessation of the insurable interest, even as against the insurer, unless the policy itself so provides.⁷

We conclude that the lack of an insurable interest in the assignees did not authorize a recovery of their interests in the policy by the administrator. The insurance proceeds

² Grigsby v. Russell, 222 U. S. 149. Cf. Phoenix Mutual Life Ins. Co. v. Bailey, 13 Wall. 616; Mutual Life Ins. Co. v. Armstrong, 117 U. S. 591.

³ Connecticut Mutual Life Ins. Co. v. Schaefer, 94 U. S. 457; Grigsby v. Russell, supra; 29 Am. Jur., Sec. 319.

⁴ Connecticut Mutual Life Ins. Co. v. Schaefer, supra.

⁵ Grigsby v. Russell, supra.

⁶ Connecticut Mutual Life Ins. Co. v. Schaefer, supra; Wheeler v. Insurance Co., 101 U. S. 439; Grigsby v. Russell, supra; 29 Am. Jur. 291, 292.

⁷ Connecticut Mutual Life Ins. Co. v. Schaefer, supra; Grigsby v. Russell, supra; Northwestern Life Ins. Co. v. Johnson, 254 U. S. 96; Dalby v. Life Insurance Co., 15 C. B. 365.

were properly apportioned by the court below, and its judgment is

Affirmed.

[fol. 38]

JUDGMENT

Extract from the Minutes of December 9th, 1940

No. 9652

J. ROB GRIFFIN, Administrator of the Estate of Robert D.
Gordon, Deceased,

versus

JOHN D. McCOACH, Trustee, et al.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Texas, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

It is further ordered and adjudged that the appellant, J. Rob Griffin, Administrator of the Estate of Robert D. Gordon, deceased, be condemned to pay the costs of this cause in this Court, for which execution may be issued out of the said District Court.

[fol. 37-44] Petition for rehearing covering 8 pages filed Dec. 30, 1940 omitted from this print. It was denied, and nothing more by order of Jan. 14, 1941

[fol. 45] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER DENYING REHEARING—January 14, 1941

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

[fol. 46] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

MOTION TO STAY MANDATE—Filed January 16, 1941

Now comes the appellant in the above entitled and numbered cause, and respectfully shows the court that he tenders herewith a Motion for Rehearing directed to the decree of this court entered on December 9, 1940, and has prayed therein for oral argument.

That after the judgment of the lower court became final, the appellant was unable to supersede the same, due to the absence of funds in his hands belonging to the decedent's estate, and that John D. McCoach, Trustee, the prevailing litigant withdrew from the Registry of the court all of the money in controversy and has distributed all except three-eighths claimed by the appellant. That in effect the judgment of the lower court has already been executed, and in [fol. 47] the event appellant prevails, his remedy will be by way of restitution.

Appellant further shows that in the event the court should adhere to its prior decision and overrule his Motion for Rehearing, he intends to apply to the Supreme Court of the United States for Writ of Certiorari directed to this Honorable Court and its record for revision and review.

Wherefore, he prays that in the event his Motion for Rehearing be overruled, that this court enter its order directing its Clerk to stay issuance of its mandate to the lower court pending his application for Writ of Certiorari to the Supreme Court of the United States.

Respectfully submitted, C. J. Shaeffer, Attorney for Appellant. Bailey & Shaeffer, Dallas, Texas, of Counsel.

[fol. 48] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER STAYING MANDATE

On Consideration of the Application of the appellant in the above numbered and entitled cause for a stay of mandate of this court therein, to enable appellant to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, It Is Ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from the date of this order there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that certiorari petition, and record have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from the date of this order, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done at New Orleans, La., this 16th day of January, 1941.

(Signed) E. R. Holmes, United States Circuit Judge.

[fol. 49] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 50] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed March 17, 1941

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted, and the case is assigned for argument immediately following No. 741.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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